

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **04 -MSRC- 003**

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS

COMPLAINANT

Vs.

CLIFFORD MORGAN, **JAMES D. BURTON**,
CARSON SIZEMORE & DONAVAN ASHER

RESPONDENTS

FINAL ORDER REGARDING JAMES D. BURTON

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent James D. Burton, and the members of the Commission having reviewed the Settlement Agreement filed on April 14, 2004 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, James D. Burton's Underground Miner's Certificate, # A – 263 – 86 , issued by the Commonwealth of Kentucky, and Respondent's Electrician's Certificate # HD – 137 – 02 issued by the Commonwealth of Kentucky, shall both be **PROBATED**, jointly and severally, for a period of six (6) months, effective upon the signing of the settlement agreement of record herein;
3. During said probationary period, if Respondent James D. Burton willfully violates any Commonwealth of Kentucky or Federal mine safety laws or

- regulations, the KDMM may file a motion with the Mine Safety Review Commission to revoke James D. Burton's Underground Miner's Certificate, # A – 263 – 86 , issued by the Commonwealth of Kentucky, and Respondent's Electrician's Certificate # HD – 137 – 02 issued by the Commonwealth of Kentucky, for the remainder of the six (6) month probationary period. James D. Burton retains his right to a hearing;
4. Respondent James D. Burton shall be required to take four (4) hours of **safety training**, to be provided by KDMM, pursuant to the terms of the Settlement Agreement, within sixty (60) days of the effective date of the Settlement Agreement;
 5. Respondent James D. Burton shall be required to take four (4) hours of **electrical training**, to be provided by KDMM, pursuant to the terms of the Settlement Agreement, within sixty (60) days of the effective date of the Settlement Agreement;
 6. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference as if reproduced herein in full as a material part of this FINAL ORDER. A copy is attached hereto;
 7. This Final Order only resolves the matters referenced herein, and any *new* enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by KDMM for the acts or omissions during that probationary period. This Final Order in no way prohibits KDMM from investigating or filing legal action based upon other activities or omissions by the

Respondent not arising from the factual basis of the original violation and resolved herein.

8. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent James D. Burton, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
9. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, James D. Burton, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
10. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 12 TH day of Aug 2004.


JOHN DAVID PRESTON, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING James Burton was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 17 day of Aug 2004:

Respondent

James D. Burton
442 Hurricane Creek Road
Hyden, KY 41749

And by regular mail postage prepaid to Respondents:

William D. Kirkland, Esq.
Karen Chrisman, Esq.
Mcbrayer, McGinnis, Leslie & Kirkland
P.O. Box 1100
Frankfort, Ky 40602 - 1100
Counsel for Clifford Morgan

Donavan Asher
P.O. Box 1700
Asher KY 40803

Carson Sizemore
P.O. Box 151
Bear Branch KY 41714

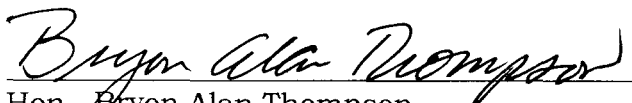
And by messenger mail to:

Paris Charles, Director
Office of Mine Safety and Licensing
1025 Capital Center Drive
Frankfort Ky 40601

Hon. Tony Oppgaard
Office of Mine Safety and Licensing
General Counsel
1025 Capital Center Drive
Frankfort Ky 40601

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601


Hon. Bryon Alan Thompson
General Counsel